IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Satnam Singh. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 1448/2006

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Date of Order: November 16, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.K. Garg, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

Heard learned counsel for the petitioner. Perused the order under challenge dated 26-9-2006 passed by the Additional Sessions Judge, Raisinghnagar, district Sri Ganganagar (for short, "the Revisional Court" hereinafter), whereby the revision petition filed by the petitioner against the order dated 2-4-2004 passed by the Additional Chief Judicial Magistrate, Raisinghnagar, district Sri Ganganagar (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the orders passed by both the Courts below.

It appears that in the proceedings under Section 138

of the Negotiable Instruments Act, 1881 (for short, "the Act" hereinafter) initiated by the non-petitioner No.2 against the present petitioner, during pendency of the proceedings, complainant/non-petitioner No.2 failed to appear in the witness box and, therefore, the evidence was closed. The non-petitioner No.2 filed an application under Section 311 Cr.P.C. for permitting him to make a statement, which was allowed by the trial Court by the order dated 2.4.2004. Against that order, a revision petition was filed by the petitioner, which was dismissed vide impugned order.

Learned counsel for the petitioner submits that after closing the evidence of the complainant/non-petitioner No.2, there being no incriminating evidence against the petitioner and, therefore, the statement of accused-petitioner was not recorded under Section 313 Cr.P.C. as also he was not permitted to lead any evidence.

In my view, till that stage, there was no incriminating evidence and, therefore, the trial Court was justified in not recording the statement of the accused-petitioner under Section 313 Cr.P.C., as also providing an opportunity to lead the evidence in defence. However, by the order dated 2-4-2004, which has not been interfered in the revision, the complainant/non-petitioner has been permitted to produce evidence and, therefore, if the complainant/non-petitioner

produces the evidence then the trial Court shall record the statement of the accused under Section 313 Cr.P.C. putting incriminating evidence, if any, against him and also allow him to lead the evidence in defence, if sought to produce.

With these observations, the criminal miscellaneous petition stands disposed of.

(H.R. PANWAR), J.

rm/mcs